IN THE

Supreme Court of the United States

October Term, 1971

No. 71-563

JAMES R. ROHRBAUGH, *et al.*
Petitioners,

v.

THE PRESBYTERY OF SEATTLE, INC., *et al.*
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

RESPONDENTS' BRIEF IN OPPOSITION

PERKINS, COIE, STONE, OLSEN & WILLIAMS
DOUGLAS P. BEIGHLE
RANDALL REVELLE
1900 Washington Building
Seattle, Washington 98101
Attorneys for Respondents

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QUESTIONS PRESENTED FOR REVIEW

1. Should the Washington Supreme Court be permitted to follow *Watson v. Jones*, 80 U.S. 679 (1872),[1] as it has done continuously for over seventy years?

2. Did the Washington Supreme Court correctly apply the *Watson* "rule of action," as recently approved by the *Hull Church* case,[2] by accepting as "final and binding" the decisions of Respondent Presbytery of Seattle, Inc.[3] with respect to the control of the Laurelhurst United Presbyterian Church, Inc.[4] and its property?

1. Hereinafter cited as "*Watson*."
2. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).
3. Hereinafter the "Presbytery."
4. Hereinafter the "Laurelhurst Church."

3. Even if this Court decided to *require* the Washington Supreme Court to apply "neutral principles of law," thereby overruling *Watson* and *Hull Church*, would the Washington Supreme Court reach the same result pursuant to the "neutral principles of law" found in the Articles of Incorporation and the Bylaws of the Laurelhurst Church?

STATEMENT OF THE CASE

Most of Petitioners' Statement of the Case (Pet. 5-12) is irrelevant to the issues before this Court. Moreover, Petitioners fail to include many facts that are essential to a full understanding of those issues. The following briefly corrects these problems.

I. Nature of the Case

Contrary to Petitioners' contention (Pet. 5), this case does not involve a dispute over the *ownership* of real and personal property of the Laurelhurst Church. It involves an equitable action brought by Respondents to enjoin Petitioners from interfering with the right and the duty of Respondent Presbytery to preserve and protect, the Laurelhurst Church property for the use and benefit of the United Presbyterian Church in the United States of America.[5] (FF XIV, Pet. App. A-29) The trial court's Decree (Pet. App. A-33 to A-36) restrains Petitioners from diverting the Laurelhurst Church property to their own uses contrary to the Constitution of the United Presbyterian Church, the final and binding orders of Respondent

5. Hereinafter the "United Presbyterian Church." In 1958, the United Presbyterian Church of North America and the Presbyterian Church in the United States of America merged to form the United Presbyterian Church in the United States of America. All parties concerned herein have accepted the United Presbyterian Church in the United States of America as the lawful successor of both merged churches. (FF V, Pet. App. A-26)

Presbytery, and the Articles of Incorporation and Bylaws of the Laurelhurst Church.

II. Summary of the Facts

A. *The "Hierarchical Structure" of the United Presbyterian Church.*

The United Presbyterian Church is a religious society organized and existing pursuant to the laws, rules, and regulations adopted by and applicable to it, which are set forth in that portion of its Constitution designated as "The Book of Order." (FF IV, Pet. App. A-24)

The lay members and clerical members of the United Presbyterian Church are organized into particular churches. Under its Constitution, its system of church government is "Presbyterian," with the various components of the church constituting one united sovereign church and the units being integral parts of the sovereign church. In the Presbyterian form of government, the congregation is but a subordinate member of a general church organization in which there are superior ecclesiastical tribunals, with a general and ultimate power of control in some supreme judicatory over the whole membership. (FF III and IV, Pet. App. A-24 to A-25) This is in contrast to the "Congregational" form of church government, wherein each congregation is strictly independent and owes no fealty or obligation to any higher authority.

There are four "judicatories" within the United Presbyterian Church, as follows (in ascending order):

(1) The "Session" is composed of elders of the local church, over which the pastor presides as moderator;

(2) The "Presbytery" is composed of representatives of several churches in a certain geographical area;

(3) Presbyteries in turn are organized within the church into 33 groups known as "Synods," the Synod in this case being the Synod of Washington-Alaska; and

(4) All of the particular churches and judicatories are in turn organized and subject to the jurisdiction of the "General Assembly," which is the supreme governing body of the United Presbyterian Church. (FF III, Pet. App. A-24)

B: *The Actions Taken by the Laurelhurst Church and by Respondent Presbytery.*

Prior to October 1967, representatives of Respondent Presbytery met with representatives of the Laurelhurst Church and advised them of the proper procedures under the Constitution of the United Presbyterian Church for resolving their dispute over the Laurelhurst Church property. (Pl. Ex. 13, R. 149) Representatives of Respondent Presbytery attended the October 5, 1967 meeting of the Laurelhurst Church congregation and advised that:

(1) Individual members may withdraw from the Laurelhurst Church, but the Constitution of the United Presbyterian Church has no provision for a congregation or church to withdraw as a unit.

(2) All property belonging to congregations of the United Presbyterian Church is held by the congregation on behalf of the Presbytery of jurisdiction, no matter how the title or deed reads. (Pl. Ex. 13, R. 149)

Notwithstanding this advice the Laurelhurst Church congregation, with but 194 of its approximately 600 members present at the October 5, 1967 meeting, voted 183 to 11 in favor of (1) withdrawing as a congregation from

the United Presbyterian Church and (2) asking Respondent Presbytery to erase the name of the Laurelhurst Church and its pastor from the rolls of Presbytery. (FF XI, Pet. App. A-27) The congregation also asked that it be allowed to retain the Laurelhurst Church property. (Pl. Ex. 13, R. 149)

Respondent Presbytery, at its October 17, 1967 meeting, ruled in response to the above requests that the Laurelhurst Church congregation be advised as follows:

> (1) ". . . that the Constitution has no provision whereby the name of a particular church can be erased from the rolls of Presbytery by action of a minority of the congregation, or even by unanimous action of the congregation. Therefore, Laurelhurst United Presbyterian Church . . . shall continue to remain on the rolls of the Presbytery of Seattle."
>
> (2) ". . . that there is no constitutional authority or provision whereby the majority of the members of a congregation or a minority group thereof, can take any constitutional action to withdraw from the United Presbyterian Church in the United States of America. Therefore the action taken by the congregation on October 5, 1967, 'to erase from the roll of the Presbytery of Seattle the name of the Laurelhurst United Presbyterian Church,' has no constitutional basis under the Constitution of the United Presbyterian Church in the d.S.A. [sic]."
>
> (3) ". . . that the minority group of 183 have no constitutional authority to agree or decide to advise the Presbytery of Seattle that the congregation of the Laurelhurst United Presbyterian Church . . . desires to have the name of the Laurelhurst United Presbyterian Church or the name of its pastor deleted from the rolls of Presbytery, and further that said group has no constitutional right or authority to retain the property of the church."
>
> (4) ". . . that they [the pastor, session, and congregation] are still under the jurisdiction of the Presby-

tery of Seattle and the Constitution of the United Presbyterian Church in the United States of America." (Pl. Ex. 13, R. 149)

In addition, after proper notice, Respondent Presbytery removed Petitioner Rohrbaugh as pastor of the Laurelhurst Church, declared the pulpit vacant, and replaced the Session of the Laurelhurst Church with an elected Administrative Commission having full powers of Session. (FF VIII to X, Pet. App. A-26 and A-27)

Although the Constitution of the United Presbyterian Church provides for appeals to the Synod of Washington-Alaska and to the General Assembly, none of the above decisions by Respondent Presbytery was appealed to these higher judicatories. (FF IX and X, Pet. App. A-27) Therefore each of the above decisions is a final decision by the highest judicatory within the United Presbyterian Church to which it has been taken.

C. *Petitioners' Actions in Violation of the Orders of Respondent Presbytery.*

Notwithstanding the fact that Respondent Presbytery took the actions cited above, Petitioner Rohrbaugh continues to act as pastor of the Laurelhurst Church. He and the Petitioners who formerly comprised the Session of the Laurelhurst Church are interfering with the Administrative Commission duly appointed by Respondent Presbytery, even though the Commission has the powers of Session pursuant to the Constitution. Petitioners refuse to allow the Commission to enter the Laurelhurst Church property or to operate with the powers of Session. They have renounced the authority of Respondent Presbytery and have stated they will not follow the Constitution of the United Presbyterian Church. They also refuse to allow

members of the Laurelhurst Church congregation who remain loyal to the United Presbyterian Church to hold a congregational meeting in the church, even if called by the Administrative Commission. (FF XV to XVIII, Pet. App. A-29 and A-30)

III. The Proceedings Below

In his Memorandum Opinion of March 12, 1969 (Pet. App. A-1 to A-10), the trial court judge ruled that in *Hull Church* this Court reaffirmed the principle established in *Watson* and other decisions of this Court that in the absence of fraud, collusion, or arbitrariness the decisions of proper church tribunals on matters purely ecclesiastical, although affecting property rights, are accepted in litigation before the secular courts as conclusive because the parties in interest made them so by contract or otherwise. The Memorandum Opinion quotes at length from the opinion of Mr. Justice Brennan in *Hull Church*, from several other cases involving the Presbyterian Church that were cited with approval by this Court in *Hull Church*, and from two relevant decisions of the Washington Supreme Court. The trial court then granted the equitable relief requested by Respondents and signed a Decree to that effect on May 9, 1969. (Pet. App. A-33 to A-36)

The Washington Supreme Court, sitting *en banc*, unanimously affirmed the trial court's decision. *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 485 P.2d 615 (1971). The Washington Supreme Court concluded that this Court approved the rule of *Watson* that "the decision of the highest tribunal of a hierarchical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to church property."

79 Wn.2d at 373, 485 P.2d at 619. Based on the *Watson* "rule of action," the Washington Supreme Court accepted as "final and binding" the decision of Respondent Presbytery that Petitioners had withdrawn from the Laurelhurst Church corporation, thereby forfeiting any right to govern the corporation or to control the use of its property. 79 Wn.2d at 373, 485 P.2d at 619.

ARGUMENT

I. Summary of the Argument

Pursuant to Supreme Court Rule 19, the Petition for a Writ of Certiorari to the Supreme Court of the State of Washington[6] should be denied by this Court because: (1) the Washington Supreme Court did not decide a substantial federal question which has not already been decided by this Court, (2) the decision of the Washington Supreme Court is in accord with the applicable decisions of this Court, and (3) there are no other "special and important reasons" for granting certiorari in this case.

The Washington Supreme Court based its decision in the present case on the *Watson* "rule of action," one of the three approaches to resolving church property disputes permitted by *Hull Church* and other relevant decisions of this Court. The Washington Supreme Court correctly applied the *Watson* "rule of action" by recognizing that the United Presbyterian Church has a "hierarchical structure" and then by accepting as "final and binding" the ecclesiastical decisions of Respondent Presbytery with respect to the control of the Laurelhurst Church and its property.

In reaching its decision, the Washington Supreme Court

6. Hereinafter the "Petition."

did not unconstitutionally resolve a controversy over church doctrine, polity, or practice. Nor does the Court's decision conflict with the decisions of other states which have applied "neutral principles of law," since *Hull Church* permits alternative approaches to resolving church property disputes.

Contrary to Petitioners' claim, the Washington Supreme Court is not *required* by *Hull Church* to rely exclusively on "neutral principles of law" to resolve church property disputes. However, even if this Court were to overrule *Watson*, *Hull Church*, and other relevant decisions of this Court by requiring the application of "neutral principles of law," the result in the present case would be the same.

Petitioners have shown no other "special and important reasons" for this Court to grant their Petition. The Washington Supreme Court has not denied Petitioners their religious freedom since they are not prevented from withdrawing individually from the Presbyterian Church to practice the religion of their choice. Nor is this a case of national importance. The Washington Supreme Court has simply followed the *Watson* "rule of action" as it has done since 1898 and as this Court has permitted it to do since 1872.

II. Argument in Support of Judgment

A. *The Washington Supreme Court Correctly Interpreted and Followed Controlling Decisions of This Court on the Role of Civil Courts in Church Property Disputes.*

The role of the civil courts with respect to questions concerning church doctrine or faith, ecclesiastical law, church polity, or the use of church property has been before this Court on several occasions. The landmark case

is *Watson*, which arose out of a schism in the Louisville Presbyterian Church caused by the issue of slavery. Ruling in favor of the faction that remained loyal to the national Presbyterian Church, *Watson* held that in a property dispute involving a church of hierarchical polity, the civil courts must accept as "final and binding" in the cases before them the ecclesiastical decisions of the highest church tribunal to which the dispute has been taken.

The *Watson* opinion classified the three types of questions concerning the rights to property held by ecclesiastical bodies which had come before the civil courts:

> "1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.
>
> "2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.
>
> "3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization." 80 U.S. at 722.

The *Watson* case was of the third type of these classes, of which the Court said:

> "The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and

which appeals to the courts to determine the right to the use of the property so acquired . . . . [Here is a case] of property purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. . . . *[I]n cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments.* There are in the Presbyterian system of ecclesiastical government, in regular succession, the Presbytery over the session or local church, the Synod over the Presbytery, and the General Assembly over all. These are called, in the language of the church organs, 'judicatories,' and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases.

"*In this class of cases we think the rule of action which should govern the civil courts,* founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, *whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.*" 80 U.S. at 726. (Emphasis added.)

Watson further discussed the above "rule of action" that civil courts must accept the ecclesiastical decisions of a hierarchical church as final and concluded:

"The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and offi-

> cers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. *It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.*" 80 U.S. at 728. (Emphasis added.)

On several occasions, the "rule of action" set forth in *Watson* has been cited with approval by this Court. In a case involving a question of whether the Roman Catholic Archbishop of the Philippines was entitled to decide who had the right to a chaplaincy without having that decision reviewed by a civil court, this Court stated:

> "In the absence of fraud, collusion or arbitrariness, the decisions of the proper Church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929),[7] citing *Watson*.

The *Watson* and *Gonzalez* cases were followed by *Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. 94 (1952),[8] which converted the principles of *Watson* and *Gonzalez* into a rule of federal constitutional law under the free exercise of religion clause of the First Amendment:

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7. Hereinafter cited as "*Gonzalez*."
8. Hereinafter cited as "*Kedroff*."

During the period subsequent to *Watson*, the Georgia courts had established the principle that an implied trust of church property existed in favor of the general church, unless the general church made a substantial departure from its tenets of faith and practice. This exception required a judicial inquiry to determine whether actions of the general church constituted such a "substantial departure" from the tenets of faith and practice existing at the time of the local church's affiliation that the trust in favor of the general church must be declared terminated. This type of inquiry was approved by the Georgia Supreme Court in *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E.2d 690 (1968).

In *Hull Church* this Court reaffirmed the principles of *Watson* and reversed the Georgia Court because it had violated the First Amendment to the Constitution. This Court held that "the restraints of the First Amendment, as applied to the States through the Fourteenth Amendment, [do not] permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." 393 U.S. at 441.

In *Hull Church* this Court also confirmed that:

> "It is of course true that the State has a legitimate interest in resolving property disputes, and that a civil court is a proper forum for that resolution. Special problems arise, however, when these disputes implicate controversies over church doctrine and practice. The approach of this Court in such cases was originally developed in *Watson v. Jones*, 13 Wall. 679, 20 L.Ed. 666 (1872), a . . . decision . . . informed by First Amendment considerations." 393 U.S. at 445.

After discussing the similarity between the factual situations of *Watson* and *Hull Church*, this Court quoted extensively from that portion of the *Watson* opinion which "has a clear constitutional ring,"[9] concluding with the principle that:

> "It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." 393 U.S. at 446.

This Court then "recognized that there might be some circumstances in which marginal civil court review of ecclesiastical determinations would be appropriate." 393 U.S. at 447. This Court indicated that such a marginal judicial involvement was contemplated by *Gonzalez*. That portion of Mr. Justice Brandeis' opinion in *Gonzalez* discussed above at page 12 of this Brief was quoted with approval:

> "'In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.' 280 U.S., at 16." 393 U.S. at 447.

In *Hull Church*, this Court then indicated that in *Kedroff* "the Court converted the principle of *Watson* as qualified by *Gonzalez* into a constitutional rule." 393 U.S. at 447. Thus, *Hull Church* approved the "rule of action" developed in *Watson* and *Gonzalez* that the decisions of hierarchical church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation

9. Set forth above on pages 11 and 12 of this Brief.

before the civil courts as final and binding in the absence of fraud, collusion, or arbitrariness.[10]

In *Hull Church* this Court also recognized, however, that the "rule of action" defined by *Watson* and *Gonzalez* was not the exclusive way for civil courts to resolve church property disputes. Civil courts are free to adopt another approach consistent with the First Amendment—basing their decisions on "neutral principles of law, developed for use in all property disputes." *Hull Church* explained this approach as follows:

> "Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which *can* be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice." 393 U.S. at 449. (Emphasis added.)

The conclusion that *Hull Church* allows *but does not require* the civil courts to adopt alternatives to the *Watson*

10. The majority of legal articles on *Hull Church* support this conclusion. See Comment, *Constitutional Law—Church Property Disputes—First Amendment Prohibits Judicial Examination of Ecclesiastical Matters*, 54 Ia. L. Rev. 899 (1969); Comment, *Hull Memorial: A Limited Solution to the Problem of Judicial Intervention in Church Property Disputes*, 18 Kan. L. Rev. 71 (1969); Comment, *Limitations on the Power of Courts in Resolving Church Property Disputes*, 36 Tenn. L. Rev. 549 (1969); Kauper, *Church Autonomy and the First Amendment: The Presbyterian Church Case*, 1969 Sup. Ct. Rev. 347 (1969); Note, *Constitutional Law—Judicial Intervention in Church Property Disputes*, XLIV Tul. L. Rev. 370 (1970); 33 Alb. L. Rev. 388 (1969); 53 Marq. L. Rev. 145 (1970); and 22 Vand. L. Rev. 674 (1969).

"rule of action" for handling church property disputes was clearly explained in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970).[11]

In a per curiam opinion, this Court dismissed an appeal from the Maryland Court of Appeals for want of a substantial federal question. The Maryland court had incorrectly interpreted *Hull Church* as *requiring* that civil courts dispose of church property disputes upon "neutral principles of law." *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 254 Md. 162, 168, 254 A.2d 162, 165 (1969). In *Church of God*, Mr. Justice Brennan, joined by Mr. Justice Douglas and Mr. Justice Marshall, added a concurring opinion that corrected the Maryland court and affirmed what this Court meant in *Hull Church*.

Discussing the *Hull Church* case, Mr. Justice Brennan explained that "[I]t follows that a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." 396 U.S. at 368. Mr. Justice Brennan then outlined three possible approaches that could be used by civil courts in resolving church property disputes. The first of these approaches was to follow *Watson*:

> "Thus the States may adopt the approach of Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666 (1872), and enforce the property decisions made within a church of congregational polity by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government, *id.*, at 724 and within a church of hierarchical polity

11. Hereinafter cited as "*Church of God.*"

> by the highest authority that has ruled on the dispute at issue, . . . Under *Watson* civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, unlike the identification of the governing body, frequently necessitates the interpretation of ambiguous religious law and usage." 396 U.S. at 368.

For any state that should decide not to follow *Watson* in resolving disputes over church property, Mr. Justice Brennan suggested two other possible approaches: "'[N]eutral principles of law, developed for use in all property disputes,'" and "the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine," provided that "[s]uch statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies." 396 U.S. at 370.

With respect to the use of "neutral principles of law," Mr. Justice Brennan cautioned that "[u]nder the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws," but that "general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues." 396 U.S. at 370. Thus, he pointed out, a state that normally resolves disputes over religious property by applying general principles of property law would have to use a different method in cases where provisions in deeds or in the constitution require a finding of departure from doctrine, suggesting that perhaps the approach would be that defined in *Watson*. 396 U.S. at 370, n. 4.

The Georgia Supreme Court, upon remand of the *Hull Church* case, applied the alternative of "neutral principles of law," rather than the *Watson* "rule of action." *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969). This was apparently an acceptable alternative to this Court and certiorari was denied from that decision. 396 U.S. 1041 (1970).

The language in the original *Hull Church* opinion clearly shows that this Court approved the "rule of action" of *Watson* and permitted the states to apply that rule. The concurring opinion in the *Church of God* case removes any possible question, if any ever existed, as to whether the state courts are free to continue to follow *Watson*, as many have done.

Thus, the Washington Supreme Court is free to apply the *Watson* "rule of action," just as it has done since it first cited the case with approval over seventy years ago in *Herman v. Plummer*, 20 Wash. 363, 55 Pac. 315 (1898).[12] In *Wilkeson v. The Rector, Wardens and Vestry of St. Luke's Parish*, 176 Wash. 377, 384, 29 P.2d 748, 751 (1934), the Washington Supreme Court approved the following "well recognized principle of law":

> "In the absence of fraud, where the right of property in a civil court is dependent on the question of doctrine, discipline, ecclesiastical law, rule, or custom, or church government, and that has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive and be governed by it in its application to the case before it." [Citing *Watson* and *Hendryx v. People's United Church of Spokane*, 42 Wash. 336, 84 Pac. 1123 (1906)].

12. See also *Grand Court of Washington, Foresters of America v. Hodel*, 74 Wash. 314, 133 Pac. 438 (1913).

The above language was quoted with approval by the Washington Supreme Court in *Hoffman v. Tieton View Community Methodist Episcopal Church*, 33 Wn.2d 716, 728, 207 P.2d 699, 705 (1949). The court also stated that "[p]erhaps the leading case on the question now being discussed is *Watson v. Jones*," from which it quoted extensively and held:

> "It is our opinion that the Methodist Church falls within the third group listed in *Watson v. Jones, supra.* Its organization is Presbyterian in form and not Congregational. As a result, it is our opinion that local churches are only parts of the larger body, and no local Methodist church may convert its property to a use not authorized by the superior church government." 33 Wn.2d at 729, 207 P.2d at 706.

Petitioners imply that prior to this case, the Washington Supreme Court had adhered to the "departure from doctrine" theory relied upon by the Georgia Supreme Court. (Pet. 9-10) To support this contention, Petitioners rely upon a quote taken out of context from *Seventh Elect Church in Israel v. First Seattle Dexter Horton National Bank*, 167 Wash. 472, 10 P.2d 207 (1932). Quoted in relevant context, it is obvious that this case does not support Petitioners' contention:

> "The appellants having withdrawn and seceded from the church now seek to recover their contributions whether in money or property, and seek compensation for services rendered.
>
> "The law is well settled that, where members of a church withdraw or secede, either singly or in a body, they forfeit all their rights to the church property. They cannot recover that which they voluntarily turned over to the church.
>
> " 'The separation or secession of part of the members from a church does not destroy the identity of

> the church or lessen the rights of those adhering to the organization, but members seceding from a church, thereby forfeit all rights to the church property *and the courts, when called upon, will award the property, and all rights pertaining thereto, to those who continue to adhere to the doctrine, tenets, and rules of the church as they existed before the division.'"* [Citations omitted.] 167 Wash. at 478, 10 P.2d at 208. (Emphasis added.)[13]

Moreover, the Washington Supreme Court recognized in the present case that it has long followed the *Watson* "rule of action":

> "This court has adopted the rule of *Watson v. Jones, supra,* in cases of this kind, having held in *Herman v. Plummer,* 20 Wash. 363, 55 P. 315 (1898) and *Hoffman v. Tieton View Community Methodist Episcopal Church,* 33 Wash.2d 716, 207 P.2d 699 (1949), that, in the absence of fraud, where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive. The propriety of this rule was again recognized in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.* We see no reason to abandon it." 79 Wn.2d at 373, 485 P.2d at 619.

The Washington Supreme Court should be allowed to apply the *Watson* "rule of action," as it has done for over seventy years and as it is permitted to do under the constitutional guidelines established by this Court in *Hull Church* and *Church of God.* There is no reason, constitutional or otherwise, why the State of Washington should be forced to adopt the approach of the State of Georgia in resolving church property disputes.

13. The portion of the quote taken out of context by Petitioners is in italics. (Pet. 10)

B. *Petitioners' Writ of Certiorari Should Be Denied Because Respondents Would Prevail Even if "Neutral Principles of Law" Were to Govern the Washington Supreme Court's Decision.*

Even if this Court were to overrule *Watson*, *Gonzales*, *Kedroff*, *Hull Church*, and the concurring opinion in *Church of God* by *requiring* that the Washington Supreme Court apply "neutral principles of law," Respondent Presbytery would be given control of the church property involved in this case. In applying "neutral principles of law" to resolve the dispute over the Laurelhurst Church property, the Washington Supreme Court would have to rely upon the Articles of Incorporation and the Bylaws of the Laurelhurst Church, which in turn incorporate the Constitution of the United Presbyterian Church.[14] As discussed below, these documents would lead the Washington Supreme Court to the same result it reached in applying the *Watson* "rule of action" to this case.

Under the Constitution of the United Presbyterian Church, the authority of an individual congregation, such as the Laurelhurst Church, is very limited. The authority over all of the affairs and activities of the Laurelhurst Church is vested in the Session, not in the congregation. A congregation has only the authority specifically accorded to it by the Constitution. Section 41.08 of the Form of Government, which is part of the Constitution, provides as follows:

"The church session shall have authority over all

14. In *Church of God*, this Court found that the Maryland Court's resolution of a church property dispute – based upon an extensive review of state statutory law, the deeds conveying the church property, the charters of the corporate congregations, and the constitution of the general church – did not involve an unconstitutional inquiry into religious doctrine. 396 U.S. at 368.

> of the affairs and activities of the particular church, except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory." (Pl. Ex. 1, R. 84)

The Form of Government does not give the congregation the right to withdraw en masse, as Petitioners have tried to do, and therefore they do not have that authority. (FF XII, Pet. App. A-28)

Both the Articles of Incorporation and the Bylaws of the Laurelhurst Church contain a number of restrictions which have been violated by Petitioners in renouncing Respondent Presbytery's jurisdiction and refusing to follow the Constitution of the United Presbyterian Church.

Article III of the Articles of Incorporation of the Laurelhurst Church recites in relevant part that:

> "The object and purpose of this corporation is to maintain religious services and stated meetings for worship of Almighty God . . . particularly the belief and practice adhered to by the denomination known as the United Presbyterian Church of North America [now the United Presbyterian Church in the United States of America, its lawful successor]; and to acquire . . . property of every kind and description . . . for the sole end of carrying out and securing the foregoing objects and purposes." (FF V, Pet. App. A-25)

Article IV of the Articles specifically sets forth that the pastor, elders, and trustees of the Laurelhurst Church are to be selected in accordance with the Constitution of the United Presbyterian Church, said officials to have only the authority granted by the Constitution. (FF V, Pet. App. A-25)

Article I of the Bylaws of the Laurelhurst Church, which were adopted at the annual congregational meeting of

January 27, 1959, requires that "*The organization, government and conduct of the affairs of the Congregation shall be subject to, and in conformity with, the 'Form of Government' as set forth in 'The Constitution of the United Presbyterian Church in the United States of America.'*" (Emphasis added.) (Pl. Ex. 3, R. 84) Article III of the Bylaws states that the duties of the Session are as prescribed in Chapter XI of the Form of Government, while Article IV states that the duties of the Board of Trustees are as prescribed in Chapter XXXII of the Form of Government. (Pl. Ex. 3, R. 84)[15]

Respondent Presbytery, acting under the authority of Section 41.15 of Chapter XI of the Form of Government (Pl. Ex. 3, R. 84), removed the Session of the Laurelhurst Church. The Session defied this order, notwithstanding the fact that Article III of its own Bylaws provides that the duties of the Session are as prescribed in said Chapter XI of the Form of Government. (Pl. Ex. 3, R. 84)

Thus, Petitioners have acted contrary to *their own* Articles of Incorporation and *their own* Bylaws by refusing to follow the Constitution of the United Presbyterian Church and the orders of Respondent Presbytery that were issued pursuant to that Constitution.

Moreover, the trustees of the Laurelhurst Church corporation have very limited authority with respect to the property of that church. Section 62.08 of the Form of Government provides:

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15. Prior to 1959 the Bylaws of the Laurelhurst Church contained essentially the same provisions. (Pl. Ex. 43, R. 555) These Bylaws were adopted at the annual meeting of the congregation on April 9, 1948 and were rewritten in January 1956 with changes through that date. These are the Bylaws that were in effect when the Laurelhurst Church acquired the disputed property.

> "Whether by civil law the trustees of a particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject also . . . to the permission of Presbytery as herein provided." (Pl. Ex. 1, R. 84)[16]

Thus, the Articles of Incorporation and the Bylaws of the Laurelhurst Church, which incorporate the Constitution of the United Presbyterian Church, give the control of the Laurelhurst Church property to Respondent Presbytery, not to Petitioners. Applying these "neutral principles of law," the Washington Supreme Court would reach the same result it reached under *Watson*. Therefore there is no reason for this Court to grant the Petition in the present case, even if it decided to overrule *Watson*, *Hull Church*, and other relevant decisions of this Court by *requiring* the application of "neutral principles of law" to resolve church property disputes.

III. Argument in Answer to Petitioners

The argument in this part is divided into eight sections. Sections A through F and Section H respond to Petition-

16. The uses which a particular church may make of property are also very limited by the Form of Government. Section 62.11 provides:

> "Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint . . . ." (Pl. Ex. 1, R. 84)

Section 62.12 provides:

> "A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church." (Pl. Ex. 1, R. 84)

ers' Argument on pages 12-19 of their Petition. Section G responds to Petitioners' Supplemental Brief.

A. *The Washington Supreme Court Followed the Constitutional Guidelines Established by This Court for Resolving Disputes Involving Church Property.*

Petitioners make two unsubstantiated claims that:

> (1) The Washington Supreme Court held that *Watson* and *Hull Church required* it to accept the decisions of an ecclesiastical tribunal in church property disputes; and
>
> (2) *Hull Church* held that civil courts *must* rest *all* church property decisions on "neutral principles of law." (Pet. 12-13)[17]

These unsubstantiated claims reflect Petitioners' fundamental misunderstanding of this Court's opinion in *Hull Church*. As discussed above at pages 13-18 of this Brief, *Hull Church* approved the *Watson* "rule of action," while providing that civil courts *may* (not must, as claimed by Petitioners) apply "neutral principles of law" in resolving church property disputes.

The Washington Supreme Court followed these constitutional guidelines, established by *Hull Church* and clarified by the *Church of God* case, by exercising the option of continuing to follow the *Watson* "rule of action," as it has done for over seventy years.

B. *In Resolving Church Property Disputes, the Washington Supreme Court Is Not Required by This Court to Rely Exclusively on "Neutral Principles of Law."*

Hull Church does not *require* the Washington Supreme

17. In addition, Petitioners assert that the Washington Supreme Court's recognition that the United Presbyterian Church has a "hierarchical structure" was based on "disputed findings." (Pet. 12) This assertion is wrong, as discussed below at page 29 of this Brief.

Court to rely exclusively on "neutral principles of law" in the present case, and the Washington Court did not purport to do so in basing its decision on the *Watson* "rule of action." Petitioners' contention to the contrary (Pet. 13-15) has been rebutted above at pages 13-20 of this Brief. Moreover, as discussed above at pages 21-24 of this Brief, even applying "neutral principles of law" the Washington Supreme Court would have granted control of the Laurelhurst Church property to Respondent Presbytery.

An additional comment on Section II of Petitioners' Argument is appropriate. Petitioners quote from a student note in *The Yale Law Journal*[18] as authority for their contention that the *Watson* "rule of action" is the "most objectionable rule." (Pet. 14) Petitioners' reliance upon quotes taken out of context from the Note is unfortunately characteristic of their use of legal authority throughout their Petition.

The quoted portion of the Note, taken from page 1137 of *The Yale Law Journal*, contends only that *under the "absolute wall" theory* the *Watson* "rule of action" is "the most objectionable rule." At page 1138 the authors of the Note point out that "the only view of the establishment clause which strongly conflicts with the principles derived from *Watson v. Jones* is the strict separation interpretation—the 'absolute wall' theory." In the author's opinion, however, the "absolute wall" theory is "the least acceptable theory of the establishment clause, and every rule for decision of church property disputes would be suspect

18. Note, *Judicial Intervention in Church Property Disputes – Some Constitutional Considerations*, 74 Yale L.J. 1113 (1965). (Hereinafter cited as "Note.")

under this interpretation." Note at 1138.[19] As the authors correctly acknowledge:

> "Under this [absolute wall] theory the establishment and free exercise clauses would always be in opposition, since enforcing a church decision would establish a religion, while refusing to enforce a church decision would establish the religion of the dissenters from that decision." Note at 1139, n. 96.

On the two pages following the statement quoted in the Petition, the authors of the Note suggest several other interpretations of the establishment clause, each of which follows *Watson*, supports the position of Respondents, and is contrary to the assertions of Petitioners.[20]

19. The authors also state:

> "The virtue of the 'formal title' policy lies solely in its simplicity. This method places so much power in the hands of the title-holder that it is an invitation to anarchy within the church government. Further, it involves a refusal to enforce firmly established equitable principles. * * * *The inequitable results which could follow from the 'formal title' theory would seem to outweigh any advantages it may have from a purely administrative standpoint.*" Note at 1131. (Emphasis added.)

20. "A court could deal with the dilemma created by the various readings of the establishment clause by treating it as of secondary importance. The court would then ground its choice of method primarily within the framework of the free exercise clause. Significantly, only the *Watson* v. *Jones* principles as modified by later case law are wholly compatible with the free exercise clause. All of the other tests conflict to greater or lesser extent with the free exercise of religion." Note at 1138.

"If the establishment clause is taken into account, the latest interpretation of that clause by the Supreme Court supports the selection of the principles derived from *Watson* v. *Jones*. Under this reading, the constitution demands strict neutrality by the state toward all churches. All the tests other than *Watson* v. *Jones* as modified erect special rules of decision for church property disputes, while the *Watson* v. *Jones* formula most closely approximates the general body of law applicable to all nonprofit voluntary associations." Note at 1138.

"*There is still another interpretation of the establishment clause, which seems most sensible in the context of church property disputes.* This view realizes that various interpretations of the establishment clause may conflict with each other, and with the free exercise clause. Therefore, it says, rather than applying each clause in isolation, an attempt should be made to reconcile them. * * *. *The test derived from* Watson v. Jones *is even more attractive under this theory. Alone of all the possible tests for resolving church property disputes, it maximizes freedom of exercise*

C. *The Washington Supreme Court Followed* Watson *and* Hull Church *in Recognizing That the Presbyterian Church Has a "Hierarchical Structure."*

Petitioners' contention that the Washington Supreme Court "unconstitutionally made a doctrinal decision" in finding that Respondent Church has a "hierarchical structure" is without merit. (Pet. 15)

Mr. Justice Brennan's concurring opinion in the *Church of God* case explains the limits of the approach adopted by this Court in *Watson* and *Hull Church* for determining church polity.

> "Under *Watson* civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, *unlike the identification of the governing body*, frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies that exercise general authority within a church *is a matter of substantial controversy*, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy. In other words, the use of the *Watson* approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined *without the resolution of doctrinal questions and without extensive inquiry into religious polity.*" 396 U.S. at 369.

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for both the church as a whole and its members, and impinges marginally, if at all, on traditional establishment concepts. This method represents a fair solution for both the church and the individual church member, and a workable accommodation between the interests of the state in property within its borders and the interests of the church in administering its property with a minimum of interference." Note at 1139. (Emphasis added.)

In a footnote, Mr. Justice Brennan added the following:

> "States following the *Watson* approach would have to find another ground for decision, perhaps the application of general property law, when identification of the relevant church governing body is impossible *without immersion in doctrinal issues or extensive inquiry into church polity.*" 396 U.S. at 370, n. 4.

Petitioners have tried to create the impression of a "substantial controversy" over the nature of the structure of the United Presbyterian Church, when in fact there is no such controversy at all.[21] While Petitioners' original Answer (R. 55) contained a "boilerplate" denial (based on lack of information or knowledge) that the United Presbyterian Church is a "hierarchical structure," the trial court's findings of fact to the contrary were never contested by Petioners.[22] Thus the Washington Supreme Court was not faced with a controversy about the structure of the United Presbyterian Church.

Moreover, in recognizing that the United Presbyterian Church has a hierarchical structure, the Washington Supreme Court did not immerse itself in doctrinal issues or inquire extensively into church polity. This was unneces-

21. See footnote 17 at page 25 of this Brief.

22. The trial court found as follows:

> "That under said constitution, rules and ecclesiastical law, the church government is the Presbyterian form of government, with the various components thereof constituting one united sovereign church and the units being integral parts of the sovereign church, and not independent or congregational." (FF IV, Pet. App. A-25)

In Petitioners' Opening Brief before the Washington Supreme Court, they did not assign error to the above Finding of Fact pursuant to Washington Supreme Court Rule on Appeal 1-43 which requires in relevant part: "No error assigned to any finding or findings of fact made or refused will be considered unless so much of the finding or findings as is claimed to be erroneous *shall be set out verbatim in the brief.*" (App. Op. Br. 11-16, R. 1147) (Emphasis added.) Moreover, Petitioners' Finding of Fact No. IV, proposed to the trial court, sets forth the hierarchical structure of the United Presbyterian Church. (App. Op. Br. 14, R. 1147)

sary, since the United Presbyterian Church is the same church involved in *Watson* and has the same type of church polity as the Presbyterian Church involved in *Hull Church*. Both of these cases recognized that determining that a national Presbyterian Church is hierarchical does not involve an unconstitutional inquiry into church doctrine or polity. As the Washington Supreme Court stated:

> "The church involved in that action [*Watson*] was Presbyterian, having precisely the same hierarchical structure as that involved in this action. There legal title was vested in the trustees of the local church; here it is vested in a corporation having trustees, but in both cases, under the church constitution, the right to control the use of the property is vested not in the trustees but in the Session, the Session in turn being subject to control by the Presbytery, the Presbytery by the Synod and the Synod by the General Assembly. The United States Supreme Court took notice of all these matters of church structure, obviously not regarding them as ecclesiastical or doctrinal in nature, but rather matters of agreement among the members concerning their self-government, which it was necessary to examine in order to determine the right to control the property." 79 Wn.2d at 370, 485 P.2d at 618.

The Washington Supreme Court did not conduct an unconstitutional inquiry into the polity of the United Presbyterian Church. The hierarchical nature of its polity was obvious from its Constitution, from *Watson* and *Hull Church*, from the trial court's undisputed findings of fact, and from previous opinions of the Washington State Supreme Court[23] and the courts of other states.[24]

23. See the discussion of the relevant Washington cases at pages 18-20 of this Brief.

24. See, *e.g.*, *Trustees of Pencader Presbyterian Church in Pencader Hundred v. Gibson*, 26 Del. 375, 22 A.2d 782 (1941); *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956); and *St. John's Presbytery v. Central Presbyterian Church of St. Petersburg*, 102 So.2d 714 (Fla. 1958). These cases, all of which involved Presbyterian churches, were cited with approval by this Court in *Hull Church*, 393 U.S. at 447.

D. *The Washington Supreme Court Correctly Construed* Hull Church *as Approving the "Rule of Action" Set Forth in* Watson.

Petitioners ambiguously assert that the Washington Supreme Court decided that *Hull Church* "follows *Watson v. Jones* in holding that civil courts can enforce ecclesiastical decrees." (Pet. 16) What *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 371, 485 P.2d 615, 619 (1971). (Pet. App. A-16) actually said was:

> "It would appear certain that [in *Hull Church*] the United States Supreme Court approved the rule laid down in *Watson v. Jones, supra,* that the decision of the highest tribunal of a hierarchical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to use church property."

The narrow holding of *Hull Church* is that the First and Fourteenth Amendments do not "permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." 393 U.S. at 441. As discussed above at pages 13-18 of this Brief, however, *Hull Church* also clearly approves the "rule of action" set forth in *Watson* as one of several alternative approaches to resolving disputes over church property.

E. *The Washington Supreme Court Did Not Unconstitutionally Resolve a Controversy Over Religious Doctrine and Practice.*

In Section V of Petitioners' Argument, they assert that the Washington Supreme Court unconstitutionally resolved a controversy over church doctrine and practice "to divest the petitioner Laurelhurst Church corporation, governed by its statutory trustees, of its property." (Pet. 17)

In relevant context, the Washington Supreme Court stated as follows:

> "The appellants are not, as they contend, the record titleholders of the property. *The record title is in [the Laurelhurst Church], a corporation which by its bylaws is subject to the discipline of the United Presbyterian Church, and is governed by a Session which must act in accord with that discipline.* The appellants have withdrawn from that church, but according to the decision of the Presbytery of Seattle, from which no appeal was taken, they had no right to withdraw from the church as a body and take with them the name of the church and its property. The pastor, the trustees, and the members of the Session who withdrew forfeited their right to govern the affairs of the church when they did so, according to the decision of the highest tribunal to which an appeal was taken, and consequently the appellants have no right to control the use of the property." 79 Wn.2d at 373, 485 P.2d at 619. (Pet. App. A-18) (Emphasis added.)[25]

In the portion of the Washington Supreme Court's opinion quoted out of context by Petitioners, the Court simply recognized two undisputable facts: (1) the record title to the church property is in the Laurelhurst Church corporation (Pet 5), and (2) according to their own terms, the corporation's Bylaws are subject to the Constitution of the United Presbyterian Church.[26] Petitioners should not be allowed to repudiate their own corporate Bylaws, as they try to do in Section V of the Petition.

As shown by the language quoted above, the Washington Supreme Court did not "divest" the Laurelhurst Church corporation of its property. Rather, pursuant to the *Watson* "rule of action," the Court accepted as "final

25. The portion in italics was quoted out of context by Petitioners. (Pet. 17)

26. See the discussion above at pages 21-24 of this Brief.

and binding the determination of Respondent Presbytery that Petitioners no longer had any right to govern the Laurelhurst Church corporation or control the use of its property.

F. *The Washington Supreme Court Did Not Deny Petitioners Their Freedom of Religion.*

The Petitioners are and always have been free to withdraw individually from the United Presbyterian Church and to practice the religion of their choice. Control of the Laurelhurst Church property, not freedom of religion, is the issue in the present case. In Section VI of Petitioners' Argument (Pet. 17-18), as well as in the proceedings below, Petitioners have consistently ignored the fact that Respondent's form of government is Presbyterian, not Congregational. For example, at page 18 the Petition quotes from *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 254 Md. 162, 254 A.2d 162 (1969), but ignores the fact that the Maryland Court of Appeals determined that the parent Church of God was Congregational, not Presbyterian, in its polity with respect to church property.

Petitioners freely joined a Presbyterian Church. They voluntarily accepted its form of government, including its rules on the use and control of church property. They are free to resign individually, just as they joined individually. However, they have no right to take the Laurelhurst Church property with them.

G. *The State Court Cases Decided After* Hull Church *Are Not in "Irreconcilable Conflict" Because* Hull Church *Permits Alternative Approaches to Resolving Church Property Disputes.*

Petitioners' basic contention in their Supplemental Brief is that "[a] current review of the state court cases shows that they are in hopeless and irreconcilable conflict in their interpretation of *Hull*." (Pet. Supp. Br. 3). Based on Petitioners' fundamental misreading of *Hull Church*, they are trying to create a "hopeless and irreconcilable conflict," when in fact there is no conflict at all.

The cases discussed in Petitioners' Supplemental Brief are not in conflict because *Hull Church* permits several different approaches to resolving disputes over church property. As discussed above at pages 13-18 of this Brief, the civil courts are free to adopt any one of the following approaches, as long as they do not involve the courts in an unconstitutional inquiry into religious doctrine, polity, or practice:

1. Adopt the approach of *Watson* and accept as final and binding the ecclesiastical decisions made within (a) a church of hierarchical polity by the highest authority that has ruled on the dispute at issue and (b) a church of congregational polity by a majority of its members. In addition to the Washington Supreme Court, the Michigan, New Jersey, New York, and Pennsylvania Supreme Courts have followed this approach subsequent to *Hull Church*. *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 485 P.2d 615 (1971); *Berkaw v. Mayflower Congregational Church*, 18 Mich. App. 245, 170 N.W.2d 905 (1969), *cert. denied*, 400 U.S. 824 (1970); *Serbian Eastern Orthodox Congregation of "St. George," Elizabeth, N.J.*

v. Serbian Eastern Orthodox Congregation of "St. George," Elizabeth, N.J. (Diocese for Eastern States of America and Canada), 106 N.J. Super. 22, 254 A.2d 119 (1969), *cert. denied*, 397 U.S. 961 (1970), *reh. denied*, 397 U.S. 1058 (1970); *Second United Presbyterian Church of Johnstown v. Presbytery of Albany*, 35 A.D.2d 252, 315 N.Y.S.2d 428 (1970), *aff'd*, 28 N.Y.2d 772, 269 N.E.2d 918, 321 N.Y.S.2d 377 (1971), *appeal dismissed*, 92 S.Ct. 80 (1971); *St. John Chrysostom Greek Catholic Church of Pittsburgh v. Elko*, 436 Pa. 243, 259 A.2d 419 (1969), *cert. denied, Dober v. Elko*, 399 U.S. 920 (1970); and *St. Michael and Archangel Russian Orthodox Greek Catholic Church v. Uhniat*, 436 Pa. 222, 259 A.2d 862 (1969), *cert. denied*, 400 U.S. 823 (1970), *reh. denied*, 400 U.S. 930 (1970).

2. Resolve a church property dispute by applying "neutral principles of law, developed for use in all property disputes." The Georgia, Indiana, Maryland, and Ohio courts have apparently adopted this approach. *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969); *cert. denied*, 396 U.S. 1041 (1970); *Merryman v. Price*, 22 Ind. 62, 259 N.E.2d 883 (1970), *cert. denied*, 92 S.Ct. 89 (1971); *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 254 Md. 162, 254 A.2d 162 (1969), *appeal dismissed, per curiam*, 396 U.S. 367 (1970); and *Serbian Orthodox Church Congregation of St. Demetrius of Akron v. Kelemen*, 21 Ohio 2d 154, 256 N.E.2d 212 (1970), *cert. denied*, 91 S.Ct. 54 (1970).

3. Pass special statutes governing church property arrangements in a manner that precludes state interference in religious doctrine. At least two recent cases have been based in part on this approach—*Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, *supra*, and *Second United Presbyterian Church of Johnstown v. Presbytery of Albany*, *supra*.

Petitioners' contention that *Hull Church* does not approve the *Watson* "rule of action" is further refuted by the fact that this Court denied certiorari in the Michigan, New Jersey, and Pennsylvania cases cited in paragraph 1 above, since all four cases adopt the *Watson* "rule of action."[27]

Moreover, contrary to Petitioners' contention (Pet. Supp. Br. 2) the New York case, *Second United Presbyterian Church of Johnstown v. Presbytery of Albany*, *supra*, is closely analogous to the present case. The New York case involved a dispute over church property arising out of a doctrinal dispute between the United Presbyterian Church and one of its congregations. The New York court recognized that the "Presbyterian Church is hierarchial [sic] in nature" and based its ruling in favor of the United Presbyterian Church on Section 17-b of the New York Religious Corporations Law, which provides in relevant part:

> "Whenever the presbytery having jurisdiction over a particular church in connection with the General Assembly of the United Presbyterian Church in the United States of America dissolves or declares extinct the particular church * * * the court shall have jurisdiction to grant an order to the effect that all property of whatever kind which may have belonged to, or have been held by, said church shall vest in the presbytery of jurisdiction * * *."

27. Petitioners failed to indicate that this Court has already denied certiorari in the two Pennsylvania cases. (Pet. Supp. Br. A-3).

In effect, this statute produces the same result as the "rule of action" in *Watson*—the church property remains under the control of the United Presbyterian Church, based on the decision of one of its presbyteries. As the New York court stated:

> "The decision of the presbytery that all assets be forfeited by appellant church, being a proper decision of a hierarchial [sic] polity based upon ecclesiastical law may be constitutionally enforced by the courts. (Watson v. Jones, 13 Wall. [80 U.S.] 679, 20 L.Ed. 666).
>
> "*Section 17-b of the Religious Corporations Law does no more than provide for such enforcement in a manner which interferes neither with the control of ecclesiastical polity nor church doctrine.*" 315 N.Y.S.2d at 431. (Emphasis added.)

This Court has denied certiorari in the two Pennsylvania cases, the Michigan case, the New Jersey case, and the New York case cited above, all of which are based on the *Watson* "rule of action." Respondents submit that this Court should similarly refuse to issue a writ of certiorari to the Washington Supreme Court, which also based the present case on *Watson*.

II. *The Present Case Is Not a Case of National Importance.*

Contrary to the impression created by Petitioners (Pet. 19), there is not a revolt brewing within the United Presbyterian Church. As of January 1972 there were 8,812 churches within the United Presbyterian Church. Since 1967 few churches, probably less than five, have been involved in litigation over church property. To extrapolate five churches into "many thousands of churches" and "congregations by tens of thousands" requires substantial imagination.

The national church involved in the present case is the same one involved in *Watson*. The principles of *Watson* have guided the United Presbyterian Church since 1872, just as those principles have guided Presbyterian churches in the State of Washington since 1898. As the Washington Supreme Court stated in its unanimous opinion in this case:

> "This Court has adopted the rule of *Watson v. Jones*, *supra*, in cases of this kind . . . . We see no reason to abandon it." 79 Wn.2d at 373, 485 P.2d at 619. (Pet. App. A-18)

This decision by the Washington Supreme Court is neither unusual nor of national importance. It simply is the sixth time since 1898 that the Washington Court has elected to adopt the principles of *Watson*.

Moreover, under the *Hull Church* and *Church of God* cases, state courts are free to adopt any one of several approaches to resolving church property disputes, including the reliance upon "neutral principles of law" advocated by Petitioners.[28] Contrary to Petitioners' contention, the Washington Supreme Court has not "set a precedent which, unless reviewed and corrected here, will plague many thousands of churches nationwide for years to come." (Pet. 19) Other state courts are free to ignore the present case and adopt one of the two acceptable alternatives to the *Watson* "rule of action."

28. See the discussion above at pages 13-18 of this Brief.

CONCLUSION

Petitioners have shown no "special and important reasons" for this Court to grant their Petition. There is no federal question of substance in this case which has not already been determined by this Court. Nor does the decision of the Washington Supreme Court conflict with applicable decisions of this Court or of other state courts. On the contrary, the Washington Supreme Court based its decision on the *Watson* "rule of action," one of the three approaches to resolving church property disputes permitted by *Hull Church*, *Church of God*, and other relevant decisions of this Court.

Even if this Court were to overrule *Watson*, *Gonzales*, *Kedroff*, *Hull Church*, and the concurring opinion in *Church of God* by *requiring* the application of "neutral principles of law" to resolve church property disputes, the result in the present case would not change.

For the foregoing reasons, the Petition should be denied by this Court.

Respectfully submitted,

PERKINS, COIE, STONE, OLSEN
& WILLIAMS
DOUGLAS P. BEIGHLE
RANDALL REVELLE
Attorneys for Respondents